

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6018 OF 2007

Kuimari Vaishali Malhari Jogankar.... Petitioner
V/s
The State of Maharashtra & Ors. Respondents.

Mr.K.K.Jadhav, Adv. For the petitioner.

Mr.R.M.Patne, AGP for the respondent Nos. 1 to 3.

Mr.P.A.Pol, Adv. For respondent No.4.

CORAM: A.P.DESHPANDE, J.

14/9/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The present petitioner and respondent No.4 being desirous of obtaining a ration shop applied in pursuance of proclamation issued by respondent No.3-Controller of Rationing for allotment of ration shop. The petitioner so also the respondent No.4 fall in the category of education unemployed and thus fall in preference No.2. The petitioner had proposed to start the shop in the premises admeasuring 360 sq. ft. which premises the petitioner claims to have taken on lease from the owner. The respondent No.4 was also similarly situated and her application was also found to be in order for being considered. The respondent No.4 had proposed premises admeasuring 200 sq.ft. Comparing the merit of the application of the petitioner and respondent No.4 the Controller of Rationing found the application of the petitioner to be more meritorious as the shop premises was bigger and the location better situated. Aggrieved by the grant of ration shop in favour of the present petitioner by respondent No.3 respondent No.4 filed a revision

with the State Government. The State Government noticed some discrepancy in some of the documents submitted by the petitioner and thus reached a conclusion that the petitioner does not appear to be in possession of the premises where he proposes to house the ration shop. Learned counsel for the petitioner submits that the conclusion drawn by the concerned Minister that the petitioner is not in possession of shop premises is wholly unsustainable as the lease deed and other documents are placed on record. Perusal of the order passed by the Minister reveals that the conclusion about the petitioner not being in possession has been drawn because of some discrepancy and is the sole ground on which ration shop granted to the petitioner has been canceled and the same has been allotted in favour of respondent No.4. As the decision to grant ration shop now depends upon the only factor i.e.as to whether the petitioner is in possession of premises or otherwise, in my opinion, it would be appropriate to remand matter for fact finding in that regard to respondent No.3-Controller of Rationing. If the Controller of Rationing finds that the petitioner is in possession of legally constructed premises then the petitioner should get the ration shop and if not the same should go to respondent No.4. Hence impugned order dated 24.7.07 passed by the Minister is quashed and set aside. Matter is remanded back to respondent No.3 for taking decision in regard to grant of ration shop after ascertaining the fact in regard to possession of the petitioner. Respondent No.3 shall decide the matter after affording an opportunity of being heard to the petitioner so also respondent No.4 in the matter. Respondent No.3 shall pass final order within a period of three months from today. Rule made absolute in above terms.

14.9.07